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ing within the trial court's discretion and not reviewable unless arbitrarily exercised, it was proper, in action against street railway for injuries to automobile passenger, to permit reopening the passenger's case to show ownership of the street car which struck the automobile.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 164, 165.\* 13 Va.-W. Va. Enc. Dig. 246.]

**2. Negligence (§ 93 (2)\*)—Imputed Contributory Negligence.**—That the wife owned an automobile which she sent to another city for her husband to use, and on her casual visit to the city, while riding with him in the automobile, it was struck by a street car, at a crossing, while she was engaged in conversation with another passenger and exercising no control over its operation, did not render negligence of the husband, if any, imputable to her, since the husband was in effect her bailee.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. § 149.\* 7 Va.-W. Va. Enc. Dig. 341.]

Error to Circuit Court of City of Richmond.

Action by Mrs. Sophia Gorsuch against the Virginia Railway & Power Company. Judgment for complainant, and defendant brings error. Affirmed.

*H. W. Anderson, A. B. Guigon, and Thos. P. Bryan*, all of Richmond, for plaintiff in error.

*J. Kent Rawley and M. J. Fulton*, both of Richmond, for defendant in error.

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MURPHY'S HOTEL CO., Inc., et al. *v.* HERNDON'S ADM'R et al.

March 15, 1917.

[91 S. E. 634.]

**1. Evidence (§ 76\*)—Presumption—Failure to Testify.**—No presumption arises from failure of claimants to testify; the execution and delivery of the notes evidencing the debts being solely in the knowledge of the debtor, who testified for them, and the consideration being equally in her knowledge, and there being no allegation of collusion between them.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 96.\* 11 Va.-W. Va. Enc. Dig. 328.]

**2. Witnesses (§ 397\*)—Impeachment by Inconsistent Statements—Effect.**—Any impeachment of a witness as to consideration by

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\*For other cases see same topic and KEY-NUMBER in all KEY-Numbered Digests and Indexes.

prior contradictory statements furnishes the opposing parties with no affirmative proof of lack of consideration.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 1265, 1266.\* 13 Va.-W. Va. Enc. Dig. 966.]

**3. Bills and Notes (§ 493 (1)\*)—Consideration—Presumption.**—In the absence of affirmative evidence of lack of consideration, the prima facie presumption of consideration for a negotiable instrument, declared by Negotiable Instruments Law, § 24 (Code 1904, § 2841a), is sufficient as regards consideration for relief under a deed of trust securing a note.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1652-1657, 1659, 1660.\* 2 Va.-W. Va. Enc. Dig. 415.]

**4. Fraudulent Conveyances (§ 301 (1)\*)—Presumption.**—That the petition of one of those petitioning for relief under a deed of trust is filed by counsel for the debtor is no evidence of collusion between debtor and petitioners, especially in the absence of a pleading of fraud.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig. § 904.\* 6 Va.-W. Va. Enc. Dig. 502.]

**5. Mortgages (§ 86 (1)\*)—Deed of Trust—Claims Secured—Presumption.**—A deed of trust by a remainderman being by its terms enforceable only on death of the life tenant, no presumption of invalidity of claims secured thereby arises from failure to assert claims thereunder before death of life tenant.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. § 1350.\* 10 Va.-W. Va. Enc. Dig. 42.]

**6. Mortgages (§ 114\*)—Deed of Trust—Delivery of Notes.**—Action not being on notes, but on deed of trust to secure debts, it is immaterial whether the notes, by which the deed of trust states the debts are evidenced, were delivered.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 223, 224, 241.\* 10 Va.-W. Va. Enc. Dig. 38.]

**7. Mortgages (§ 25 (6)\*)—Deed of Trust—Evidence of Debt.**—A deed of trust to secure debts is sufficient evidence of existence of the debts, in the absence of evidence of their payment subsequent to its delivery.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 42, 1364.\* 10 Va.-W. Va. Enc. Dig. 38.]

**8. Mortgages (§ 311\*)—Deed of Trust—Decreeing Release—Pleading to Support.**—A decree directing release of a deed of trust to secure notes, in effect payable to holder or holders thereof, to be valid, must be based on some pleading raising the issue of there be-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ing any holder or holders thereof; and an ex parte report of a special commissioner is not such a pleading.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 919-929.\* 10 Va.-W. Va. Enc. Dig. 78.]

**9. Mortgages (§ 311\*)—Deed of Trust—Decreeing Release—Necessary Parties.**—Decree directing release of a deed of trust is void, being made in a proceeding to which persons secured thereby are not parties, and of which they are not given notice.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 919-929.\* 16 Va.-W. Va. Enc. Dig. 750.]

**10. Mortgages (§ 315 (1)\*)—Deed of Trust—Release under Decree—Notice of Invalidity.**—A release by the trustee of a deed of trust is not effective, so as to advance the lien of judgment creditors of the maker of the deed of trust; it showing on its face that it was under decree referred to therein, an examination of which, with the commissioner's report also referred to therein for the facts on which it was based, would show that the decree was void.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 942, 943, 945, 946, 948.\* 16 Va.-W. Va. Enc. Dig. 750.]

Appeal from Chancery Court of Richmond.

Petitions by A. J. Bradley, administrator of John F. Herndon, deceased, and others, against the Murphy's Hotel Company, Incorporated, and others. Decree for petitions, and respondents appeal. Affirmed.

*A. B. Dickinson*, of Richmond, for appellants.

*Wm. P. De Sausure*, of Richmond, for appellees.

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CITY OF NORFOLK *v.* GRIFFIN BROS.

March 15, 1917.

[91 S. E. 640.]

**1. Constitutional Law (§ 230 (2)\*)—Licenses (§ (2)\*)—Occupation Taxes—Powers of Cities.**—Norfolk City Charter provides that the city council may raise by taxes and assessments such sums as they deem necessary, and as it shall deem expedient, in accordance with the Constitution and laws of this state and of the United States. Tax Bill (Code 1904, p. 2238) § 90, provides that any person accepting contracts for work on any building requiring use of specified materials, or any other building material, shall be deemed a contractor, and that every contractor shall procure a license to carry on the business of a contractor. The city of Norfolk passed an ordinance requiring a separate license for doing the several kinds

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